REVIEWS

THE CONTEMPT POWER. By Ronald Goldfarb. New York: Columbia University Press, 1963. Pp. 366. $7.50.

Goldfarb attempts in this book to describe and analyze that rather amorphous body of law that has grown up around the contempt power; to point out the imperfections, and even dangers, of that law as it now exists; and to suggest possible reforms. He has produced a thorough and exhaustive study, albeit a sometimes dry and colorless one.

Goldfarb has done an admirable job of slicing through the language and doctrine in terms of which the contempt power has been rationalized and laying bare the many inconsistencies and contradictions present in it. He demonstrates that the traditional distinctions between civil and criminal and between direct and indirect contempt have been so "liquefied," to adopt his term, that it is no longer possible, even for a trained lawyer in many cases, to determine whether a contempt is civil or criminal, direct or indirect. Yet these classifications are of the utmost importance in that they determine the procedure by which the contemnor will be tried and the type of sanction to which he may be subject:

> One must note that these classifications are signally important. With each labeling of a given contempt, a different door is opened to a different legal arena and a new association of participating procedures and characteristics. These classifications go to the heart of an accused contemnor's liberty and property rights. The decision-maker's every treatment of a contempt case involves a kaleidoscope of legal procedures. One turn, one move of position causes a swirl of new and special legal relationships between government and the individual. This aspect of the law of contempt is as reasonable as Russian roulette.[1]

Thus direct contempts may be dealt with summarily, indirect contempts require a hearing; direct contempts receive less first amendment protection than indirect contempts; criminal contempts may be pardoned, civil contempts cannot be; civil contempts allow imprisonment which could in theory continue indefinitely, while criminal contempts usually have limited punishment; the privilege against self-incrimination and the criminal statute of limitations apply to criminal but not civil contempts; the burden of proof is greater for criminal than for civil contempts; the civil contempt sentence can be purged while an adjudication of criminal contempt cannot be purged.

Goldfarb is at his best in his rather impassioned discussion of the congressional contempt cases. It is in the legislative committee investigations that he finds the dangers which he sees in the contempt power generally to have been most fully realized. Because of the tendency which he sees in these legislative investigations, backed by the contempt power, to "freeze the individual curiosity, daring, and ingenuity so essentially a part of our national characteristic,"[2] Goldfarb would substantially limit or even abolish the legis-

1. P. 48.
2. P. 288.

lative contempt power. He argues that this is preferable to any attempt to limit the legislative investigating power itself.[3]

Goldfarb's ultimate proposal is the enactment of a statute creating a criminal offense (versus a power) called "misdemeanor to government," defined as wilful conduct which *substantially* obstructs the proper functioning of a governmental body or official.[4] The obstruction would have to be "substantial" in the sense that the governmental agency is materially damaged (more than inconvenienced), and no alternative is available other than to treat the act as a completed offense. This statute would be applied like any other criminal statute, under ordinary criminal procedures and with the usual constitutional protections (especially the rights to trial by jury, pardon, due process, counsel, and an impartial judge). Upon the passage of this statute Goldfarb would recommend dispensing with "the innate contempt power as we now know it."[5] The statute, together with already existing statutes such as those punishing breach of the peace, would cover all of those contempts now classified as criminal and the more aggravated civil contempts. (An "aggravated" civil contempt is one where the contempt goes so far as to become a wrong to the court itself, rather than to an individual party, and is of such a nature as to make inappropriate any treatment other than criminal sanction.) Goldfarb urges that the remaining civil contempts be dealt with through other devices than a contempt power. Principal among the "other devices" which Goldfarb urges should be used as alternatives to the contempt power are the "plenary power, truly inherent in any legitimate working governmental body, of physical control and expulsion,"[6] and the traditional powers of execution such as garnishment, levy, and attachment. He acknowledges that these techniques, as they now stand, might be inadequate, but argues that, sharpened and perfected, they could satisfactorily perform many of the tasks now assigned to the contempt power:

> Only when the recalcitrant witness goes so far as to make normal execution by the court impossible should personal action against him be taken, and then it would be for a true contempt of the court, a criminal interference with government. After trial for this offense, the contemnor could be imprisoned for a definite period. But, where civil execution (against the recalcitrant witness' will) is possible, this should be the course.[7]

The book is somewhat marred by Goldfarb's tendency to use turgid and convoluted language:

> With the multimillenary growth of organized societies, the sophistication of governing systems, and the intercomplexity of the relationships between sovereigns and men, some power force within a rule of law scheme be-

3. Pp. 287-90.
4. Pp. 301-08.
5. P. 301.
6. P. 305.
7. P. 296.

> came necessary to replace the caveman's club as a means of enforcing obedience and respect.[8]

And on occasion he slips into such pedantic generalizations as:

> The idea that obedience to divine commands was good and disobedience sinful has been traced to the assertions of the early popes, as well as the emperors. It was probably not new with them.[9]

And it is unfortunate that the book, published before the Supreme Court's recent decision involving Governor Barnett,[10] was not able to deal in any detail with that decision. Goldfarb does, however, discuss the right to trial by jury in contempt cases generally and, in a postscript, briefly analyzes the special considerations involved in the Barnett case.

All in all, though, it is quite an impressive book. Hopefully it will stimulate reform in this troublesome area of the law.

JUDGE BAILEY BROWN†

LAW, LIBERTY AND PSYCHIATRY. By Thomas S. Szasz, M.D.* New York: The MacMillan Company, Pp. 281. $7.50.

THE evil that men do certainly lives after them; indeed, it often shows a disagreeable tendency to live with them and follow them about. In approaching the task of reviewing a book by Thomas Szasz, already author of an earlier tendentious and wildly misleading exposition entitled *The Myth of Mental Illness*,[1] a British psychiatrist is bound to experience a certain advance prejudice. Recognizing this, he must in honesty acknowledge it. *The Myth of Mental Illness* probably deserved no more than it got from most British reviewers, whose medical education and eclectic psychiatric background equipped them to point out that a doctor who could seriously maintain that mental illness was a myth was a doctor whose medical education and experience must have left a good deal to be desired.

But there was no reason why reviews of this kind should have deterred Dr. Szasz, prominent member of the editorial board of the *Journal of Nervous and Mental Disease*, and of the board of consultants of *Psychoanalysis and the Psychoanalytic Review*, from launching a further literary and professional bombshell in the general direction of the reliance of the American legal system upon the sociologic and psychoanalytic concepts of psychiatry. This is, in fact, his third book, as listed by his publishers, the first being *Pain and Pleasure*,[2]

8. P. 10.
9. P. 11.
10. United States v. Barrett, 376 U.S. 681 (1964).

†United States District Court, Western District of Tennessee.

*Professor of Psychiatry, State University of New York, Syracuse.

1. THOMAS SZASZ, THE MYTH OF MENTAL ILLNESS (1961).
2. THOMAS SZASZ, PAIN AND PLEASURE (1957).